

ORDINANCE NO. 3474

AN ORDINANCE of the City Council of the City of Kent, Washington, repealing the City's Commute Trip Reduction Code, Chapter 6.12 of the Kent City Code, in its entirety and enacting a new Chapter 6.12 entitled Commute Trip Reduction Code to bring the City's code into conformity with recent changes to state law.

WHEREAS, the sections of Chapter 6.12 of the Kent City Code as currently enacted have been superceded by changes made to the state Commute Trip Reduction ("CTR") law, RCW 70.94.521-551; and

WHEREAS, the City of Kent recognizes the importance of increasing individual citizen's awareness of air quality, energy consumption, and traffic congestion, and the contribution individual actions can make toward addressing these issues; and

WHEREAS, traffic congestion in the City of Kent imposes significant costs on City business, government and individuals, including lost working hours and delays in the delivery of goods and services, and may adversely affect the City's desirability as a place to live, work, visit and do business; and

WHEREAS, motor vehicle emissions pollute the air, and air pollution causes significant harm to public health and degrades the quality of the environment; and

WHEREAS, reducing the number of vehicles using City streets may postpone or eliminate the need and cost of increasing the capacity of existing roadways; and

WHEREAS, employers have significant opportunities to encourage and facilitate the reduction of single occupant vehicle commuting by their employees; and

WHEREAS, State policy, as set forth in RCW 70.94.521-551 and the CTR Task Force Guidelines, requires the City of Kent to develop and implement a plan to reduce single-occupant vehicle commute trips; and

WHEREAS, the plan should require affected employers to implement programs to reduce the number of vehicle miles traveled per employee and the number of single occupant vehicles used for commuting purposes by their employees; and

WHEREAS, a transportation demand management element, such as a CTR plan, is required as part of the Washington State Growth Management Act (RCW 36.70A.070(6e); NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON,
DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 6.12 of the Kent City Code entitled "Commute Trip Reduction" is hereby repealed in its entirety.

SECTION 2. A new Chapter 6.12, entitled "Commute Trip Reduction" is hereby added to the Kent City Code as follows:

CHAPTER 6.12. COMMUTE TRIP REDUCTION

Sec. 6.12.010. Short title. This Ordinance shall be known as the Commute Trip Reduction (CTR) Ordinance, and may be cited as such.

Sec. 6.12.020. Definitions. The following definitions shall apply in the interpretation and enforcement of this ordinance:

A. *Affected employee* means a full-time employee who is scheduled to begin his or her regular work day at a single worksite between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months.

B. *Affected employer* means an employer that employs, at a single worksite, one hundred (100) or more full-time employees who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. The individual employees may vary during the year. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.

C. *Alternative mode* means any type of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed work weeks if they result in reducing commute trips.

D. *Alternative work schedules* means programs such as compressed work weeks, flex time, or working on Saturday and/or Sunday, that eliminate peak period work trips for affected employees.

E. *Base year* means the period on which goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips shall be based.

- F. *City* means the City of Kent.
- G. *Commute trips* means trips made from a worker's home to a worksite with a regularly scheduled arrival time of 6:00 a.m. to 9:00 a.m. (inclusive) on any weekday.
- H. *CTR plan* means the City of Kent's plan as set forth in this ordinance to regulate and administer the CTR programs of affected employers within its jurisdiction.
- I. *CTR program* means an employer's strategies to reduce affected employees' SOV use and VMT per employee.
- J. *CTR zone* means an area, such as a census tract or combination of census tracts, within the City characterized by similar employment density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.
- K. *Compressed work week* means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements. Compressed work weeks must be an ongoing arrangement.
- L. *Dominant mode* means the mode of travel used for the greatest distance of a commute trip.
- M. *Employee* means anyone who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer.
- N. *Employer* means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district, or other individual or entity, whether public, non-profit, or private, that employs workers.
- O. *Exemption* means a waiver from any or all CTR program requirements granted to an employer by the City based on unique conditions that apply to the employer or employment site.
- P. *Flex time* means an employer policy allowing individual employees some

flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.

Q. *Full-time employee* means a person, other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks for an average of at least 35 hours per week.

R. *Good faith effort* means that an employer has met the minimum requirements identified in RCW 70.94.531, as now enacted or subsequently amended, and this ordinance, and is also working collaboratively with the City to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed-upon length of time.

S. *Implementation* means active pursuit by an employer of the CTR goals of RCW 70.94.521-551, as now enacted or subsequently amended, and this ordinance as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, or commencement of other measures according to its approved CTR program and schedule.

T. *Mode* means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, bicycle, walking, compressed work week schedule and telecommuting.

U. *Peak period* means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

V. *Peak period trip* means any employee trip that delivers the employee to begin his or her regular workday between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

W. *Proportion of single-occupant vehicle trip or SOV Rate* means the number of commute trips over a set period made by affected employees in SOVs divided by the number of potential trips taken by affected employees working during that period.

X. *Single-occupant vehicle (SOV)* means a motor vehicle occupied by one (1) employee for commute purposes, including a motorcycle.

Y. *Single-occupant vehicle (SOV) Trips* means commute trips made by affected employees in SOVs.

Z. *Single worksite* means a building or group of buildings on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.

AA. *Telecommuting* means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.

BB. *Transportation demand management (TDM)* means a broad range of strategies that are primarily intended to reduce and reshape demand on the transportation system.

CC. *Transportation management organization (TMO)* means a group of employers or an association representing a group of employers in a defined geographic area. A TMO may represent employers within specific city limits or may have a sphere of influence that extends beyond city limits.

DD. *Vehicle miles traveled (VMT) Per Employee* means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.

EE. *Week* means a seven-day calendar period starting on Monday and continuing through Sunday.

FF. *Weekday* means any day of the week except Saturday or Sunday.

Sec. 6.12.030. Responsible agent.

A. The Director of Public Works, or his/her designate, shall have general charge of, and supervision over, the administration and enforcement of this ordinance.

B. The Director of Public Works shall establish Administrative Regulations consistent with this ordinance for the purpose of enforcing and carrying out its provisions.

Sec. 6.12.040 Designation of CTR zone and base year values. All employers within the City's boundaries, including the City's potential annexation area boundaries, are located in the Commute Trip Reduction Zone known as the "South King County Zone". The 1992 base year value for the South King County Zone's proportion of single-occupant-vehicle SOV trips shall be 85 percent. The 1992 base year value for the South King County Zone's vehicle miles traveled per employee shall be set at 9.3 miles. Commute trip reduction goals for affected employers shall be calculated from these 1992 South King County Zone values or from values determined through a baseline survey of each worksite at the time the worksite first becomes CTR affected. Therefore, affected employers shall establish a program designed to result in the base year values for each CTR-affected worksite to be reduced by the amounts and dates specified in the Commute Trip Reduction Goals listed in Sec. 6.12.050 of this ordinance.

Sec. 6.12.050. Commute trip reduction goals. Affected employers shall achieve the following reductions in vehicle miles traveled per employee as well as in the proportion of single-occupant-vehicle trips as determined by the 1992 base year values for South King County CTR Zone, if the employer met the "affected employer" definition in 1992, or through the employer's initial baseline survey conducted at the worksite.

- A. 15 percent reduction after two years.
- B. 20 percent reduction after four years.
- C. 25 percent reduction after six years.
- D. 35 percent reduction after twelve years.

Sec. 6.12.060 Applicability. The provisions of this ordinance shall apply to any affected employer at any single worksite within the corporate limits of the City of Kent. Employees will only be counted at their primary worksite. The following classifications of employees are excluded from the counts of employees:

1. Seasonal agricultural employees, including seasonal employees of processors of agricultural products; and

2. Employees of construction worksites when the expected duration of the construction is less than two years.

A. *Notification of applicability.*

1. The City will use its best efforts to provide written notification to known affected employers located within the City that they are subject to this ordinance within 30 days after passage of this CTR Ordinance. Such notice shall be addressed to the company's chief executive officer, senior official, or CTR manager at the worksite.

2. If affected employers do not receive notice within 30 days of passage of the ordinance, the City may grant an extension of up to 180 days within which to develop and submit a CTR program.

3. If an affected employer has not been identified or does not identify itself within 180 days of the effective date of this ordinance or if the affected employer does not submit a CTR program within 180 days from the effective date of this ordinance, that employer is in violation of this ordinance.

4. Any existing employer of 75 or more employees who obtains a business license in the City shall be required to complete an Employer Assessment Form, provided to the employer by the City, to determine whether or not that employer will be deemed affected, or non-affected, in accordance with the provisions of this ordinance.

B. *New affected employers.*

1. *Notice to City.* Employers that meet the definition of "affected employer" in this ordinance must identify themselves to the City within 180 days of either moving into the boundaries of the City of Kent or growing in employment at a worksite to one hundred (100) or more affected employees. These employers shall be given 180 days to develop and submit a CTR program.

2. *Violation.* Employers that do not identify themselves within 180 days shall be deemed in violation of this ordinance.

3. **Reduction Goals.** Newly affected employers shall have two years to meet the first CTR goal of a 15 percent (15%) reduction in proportion of single occupant vehicle (SOV) trips or vehicle miles traveled (VMT) per person; four years to meet the second goal of a 20 percent (20%) reduction; six years to meet the third goal of a 25 percent (25%) reduction, and twelve years to meet the fourth goal of a 35 percent (35%) reduction, from the time they submit an approved CTR program.

C. ***Change in status of an affected employer.***

1. If an employer initially designated as an affected employer no longer employs one hundred (100) or more affected employees and expects not to employ one hundred (100) or more affected employees for the next twelve (12) months, that employer is no longer an affected employer.

2. If the same employer returns to the level of one hundred (100) or more affected employees within the same twelve (12) months, that employer will be considered an affected employer for the entire 12 months and will be subject to the same program requirements as other affected employers.

3. If the same employer returns to the level of one hundred (100) or more affected employees twelve (12) or more months after its change in status to a non-affected employer, that employer shall be treated as a new affected employer and will be subject to the same program requirements as other new affected employers.

It is the responsibility of the employer to notify the City of changes in its status as an affected employer.

Sec. 6.12.070. Affected employer's requirements and reporting. An affected employer is required to make a good faith effort to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. The affected employer shall submit a description of its program to the City and shall provide an annual progress report to the City on employee commuting and progress toward meeting its SOV goals. The CTR program must include the following mandatory elements described below:

A. *Mandatory program elements.* CTR programs submitted by affected employers shall, at a minimum, include the following mandatory elements:

1. *Transportation coordinator.* The affected employer shall designate a transportation coordinator to administer the CTR program. The coordinator's name, location, and work telephone number must be prominently displayed at each affected worksite. The coordinator shall oversee all elements of the employer's CTR program and act as liaison between the employer and the City. An affected employer with multiple sites may have one transportation coordinator for all sites.

2. *Information distribution.* Information about alternatives to SOV commuting shall be provided to employees at least once a year. This shall include, but not be limited to, a summary of the employer's program and the name and phone number of the transportation coordinator. Affected employers must also provide a summary of their program to all new employees at the time of hire. Each employer's program description and annual report must report the information to be distributed and the method of distribution.

3. *Annual progress report.* The CTR program must include an annual review of employee commuting and progress in the form of an "annual progress report." This report must demonstrate good faith efforts toward meeting the SOV and VMT reduction goals. Affected employers shall file an annual progress report with the City in accordance with the format established by this ordinance and consistent with the CTR Task Force Guidelines. The report shall describe each of the CTR measures that were in effect for the previous year, the results of any commuter surveys undertaken during the year, and the number of employees participating in CTR programs. Survey information or approved alternative information must be provided in the reports submitted in the second, fourth, sixth, eighth, tenth, and twelfth years after implementation begins. The employer should contact the City for the format of the report.

4. *Additional program elements.* In addition to the program elements described above, affected employer's CTR programs shall include a set of additional measures designed to meet CTR goals. These additional measures must receive prior

written approval from the City. A list of suggested additional elements are described in RCW 70.94.531 and are available from the City.

Sec. 6.12.080. Record keeping. Affected employers shall maintain all records of their CTR program for a period of at least four (4) years or until authorized by the City to dispose of such records. All records shall be made available to the City upon reasonable request for the purposes of reviewing program progress and/or compiling summary reports and analysis.

Sec. 6.12.090. Schedule and process for CTR program submittal, review and implementation.

- A. *CTR program submittal.* Affected employers shall develop a CTR program and submit a description of that program to the City of Kent for approval within 180 days from the date the employer qualifies as an affected employer.
- B. *CTR annual progress reports.* Upon review of an affected employer's initial CTR program, the City shall establish that employer's annual reporting date, which shall not be less than 12 months from the day the program is submitted. Each year on that employer's annual reporting date, the employer shall submit its annual CTR report to the City.
- C. *CTR program review.* The City shall provide the employer with written notification if the City determines that a CTR program is unacceptable. The notification must give cause for any rejection. If the employer receives no written notification of extension of the review period of its CTR program, or receives no comment on the CTR program or annual report within 90 days of the employer's submission, the affected employer's program or annual report is deemed accepted. The City of Kent may extend review periods up to an additional 90 days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

Sec. 6.12.100 Modifications of CTR requirements. Any affected employer may submit a request to the City for modification of its CTR program elements, other than the

mandatory elements, including record keeping requirements. The City may, at its option, grant this modification request if one of the following conditions exists:

A.1 *Exemptions.* Affected employers may request an exemption from any or all CTR program elements at a particular worksite. The Public Works Director may grant an exemption if the affected employer can demonstrate it faces an extraordinary circumstance and is unable to implement measures that could reduce the portion of SOV trips and VMT per employee. The City shall annually review all employer exemptions, and shall determine whether the exemptions will continue to be in effect during the following program year.

A.2 *Employee Exemptions.* The City may exempt specific employees or groups of employees who are required to drive alone to work as a condition of employment from a worksite's CTR program. The City may also grant exemptions for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The City will use the criteria identified in the CTR Task Force Guidelines to assess the validity of employee exemption requests. The City of Kent shall review annually all employee exemption requests and shall determine whether the exemption will be in effect during the following program year.

B. *Goal modification.* An affected employer may request a modification of its CTR program goals. These requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description or annual report. The modification request must clearly explain why the affected employer is unable to achieve the applicable goal. The affected employer should also demonstrate that it has implemented all of the elements contained in its approved CTR program. The City will review, grant, or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines. An affected employer may not request a modification of the applicable goals until one year after the City approves its initial program description or annual report.

C. *Program Modification.* The following criteria for achieving goals for VMT per employee and proportion of SOV trips shall be applied to determine requirements for CTR

program modifications:

1. If an affected employer meets either or both goals, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.

2. If an employer makes a good faith effort, but has not met or is not likely to meet the applicable SOV or VMT goal, the City shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modifications, the employer shall submit a revised CTR program description to the City for approval within 30 days of reaching agreement.

3. If an employer fails to make a good faith and fails to meet the applicable SOV or VMT reduction goal, the City shall work collaboratively with the employer to identify modifications to the CTR program and shall direct the employer to revise its program within 30 days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The City shall review the revisions and notify the employer of acceptance or rejection of the modified program. If a modified program is not accepted, the City will notify the employer within 30 days and, if necessary, require the employer to meet with City program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the City within 14 calendar days after the conference.

D. *Modification of CTR program elements.* Any affected employer may request modification of an approved CTR program element. Requests may be granted under the following conditions:

1. The affected employer demonstrates that it is unable to implement one or more program element(s) for reasons beyond its control;

2. The affected employer demonstrates that implementation of a program element would cause undue hardship; or

3. The affected employer demonstrates that a substitute element would be as

effective or more effective than the previously approved program element.

E. *Extensions.* An affected employer may request additional time to submit a CTR program or CTR annual progress report, or to implement or modify a program. The employer must submit its request in writing before the due date of the program, modification or annual report. Extensions not to exceed 90 days shall be considered for reasonable causes. Employers will be limited to a total of 90 extension days per year. Extensions shall not exempt an employer from any responsibility to meet program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. However, an employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the City.

Sec. 6.12.110. Credits.

A. *Credit for programs implemented prior to the base year.* Affected employers with successful Transportation Demand Management (TDM) programs in effect prior to the employer's worksite base year may be eligible to apply for program exemption credit, which may exempt them from most program requirements. Affected employers wishing to receive credit for existing TDM efforts may do so by applying to the City's Public Works Director. Application for credit should include data from a survey of employees or equivalent to establish the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent data shall conform to all applicable standards established by the CTR Task Force Guidelines. The employer shall be considered to have met the first measurement goals if their VMT per employee and proportion of SOV trips are equivalent to a 12 percent (12%) or greater reduction from the final base year South King County CTR Zone values. This three percentage point credit (12%, rather than 15% goal) applies only to the first measurement goals.

B. *Credit for alternate work schedules, telecommuting, bicycling and walking by affected employees.* In the calculation of SOV rate and VMT per employee, commute trips

eliminated through alternative work schedules, telecommuting, bicycling and walking will count as 1.2 vehicle trips eliminated.

Sec. 6.12.120. Enforcement.

A. *Compliance.* Compliance means submitting required reports and documentation at prescribed times and fully implementing in good faith all provisions in an accepted CTR program or otherwise meeting or exceeding VMT and SOV goals of this ordinance.

B. *Civil violations.* The following shall constitute a civil violation of this ordinance:

1. Failure to submit a complete CTR program within the specified deadlines.
2. Failure to implement an approved CTR program.
3. Failure to submit an annual CTR report.
4. Failure to make a good faith effort.
5. Submission of fraudulent data.
6. Failure to revise or modify a CTR program found to be unacceptable by the

City.

C. *Penalties.*

1. No affected employer with an approved CTR program which has made a good faith effort may be held liable for failure to reach the applicable SOV or VMT goal.

2. The penalty for violations in (B) above shall be assessed by the Public Works Director in an amount not to exceed \$250 per day and shall be considered a Class 1 civil infraction pursuant to RCW 7.80.120.

3. Affected employers shall not be liable for monetary penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining unit under applicable laws, if the issue was raised by the employer and pursued in good faith. Unionized employers shall be presumed to act in good faith compliance if they:

a. Propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and

b. Advise the union of the existence of the statute and the mandates

of the CTR program approved by the City of Kent and advise the union that the proposal being made is necessary for compliance with state law.

D. *Collection.* All penalties due and unpaid under this ordinance may be collected by civil action, which remedy shall be in addition to any and all other existing remedies and penalties.

Sec. 6.12.130. Appeal of administrative decisions.

A. Affected employers shall be notified in writing of the City's decision regarding unacceptable programs, exemptions, modification of goals, modification of CTR program elements, and violations.

B. Employers shall have 30 days following notification by the City to file an appeal of these decisions with the Kent Hearing Examiner.

C. Hearings before the Hearing Examiner shall be held according to the procedures set forth in Chapter 2.32 of the Kent City Code. The Hearing Examiner's decision shall represent final action by the City, unless an appeal is made to the Superior Court of King County within ten (10) working days after issuance of such decisions.

SECTION 3. - Severability. If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

SECTION 4. - Savings. The existing Chapter 6.12 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

//

//

SECTION 5: - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication as provided by law.


JIM WHITE, MAYOR PRO-TEM

ATTEST:


BRENDA JACOB, CITY CLERK

APPROVED AS TO FORM:



ROGER A. LUBOVICH, CITY ATTORNEY

PASSED: 21 day of September, 1999.

APPROVED: 21 day of September, 1999.

PUBLISHED: 24 day of September, 1999.

I hereby certify that this is a true copy of Ordinance No. 3474, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

 (SEAL)
BRENDA JACOB, CITY CLERK

P:\Civil\Ordinance\CommuteTripReduction.doc